

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANDREWS CARRILLO *et al.*,

Plaintiff,

-v-

MONSTER CONSTRUCTION LLC (D/B/A MONSTER  
CONSTRUCTION) *et al.*,

Defendants.  
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19 Civ. 1365 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:


On July 5, 2022, Plaintiffs filed a letter advising the Court that they “have made multiple attempts to serve Defendant Eric Hermosillo [with the summons and Amended Complaint] without success.” Dkt. 245. As a result, Plaintiffs requested that they be permitted “to discontinue this action without prejudice against Defendant Eric Hermosillo so that Plaintiffs may move forward with their claims against the served Defendants.” *Id.* On July 13, 2022, Plaintiffs filed a notice of voluntary dismissal as to Defendant Eric Hermosillo pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Dkt. 248.

Under *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199 (2d Cir. 2015), the district court retains jurisdiction to review and approve any settlement to ensure compliance with the Fair Labor Standards Act (“FLSA”) notwithstanding the parties’ joint stipulation of dismissal with prejudice pursuant to Rule 41(a)(1)(A)(ii). The Second Circuit recently held that *Cheeks* applies equally to FLSA claims that are dismissed without prejudice pursuant to under Rule 41(a)(1)(A)(i). *See Samake v. Thunder Lube, Inc.*, 24 F.4th 804, 810 (2d Cir. 2022) (“[T]he logic of *Cheeks* as applied to Rule 41(a)(1)(A)(ii) dismissals with prejudice applies equally to Rule 41(a)(1)(A)(i) dismissals without prejudice.”).

Accordingly, it is hereby ORDERED that, by July 20, 2022, Plaintiffs shall file a letter confirming that no settlement has been reached between Plaintiffs and Defendant Eric Hermosillo. *See id.* at 811 (“We therefore hold that the district court properly inquired as to the existence of any FLSA settlement, and the Rule 41(a)(1)(A)(i) notice of dismissal did not automatically divest the district court of jurisdiction. Had a FLSA settlement existed, the district court would then engage in a *Cheeks* fairness review, but in the absence of a settlement, the notice of dismissal should be so-ordered.”).

SO ORDERED.

Dated: July 15, 2022  
New York, New York

  
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JOHN P. CRONAN  
United States District Judge